

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LARRY K. THOMPSON AND
MARILYN T. THOMPSON,

Plaintiffs,

v.

CPS ACQUISITION COMPANY

Defendant.

CIVIL ACTION No.:

COMPLAINT

COME NOW Plaintiffs LARRY K. THOMPSON and MARILYN T. THOMPSON, by and through their attorney of record, and file this Complaint against Defendant CPS ACQUISITION COMPANY (“CPS”) and plead as follows:

INTRODUCTION

1.

This is a cause of action commenced by Larry K. Thompson and Marilyn T. Thompson against Defendant CPS for damages arising out of Defendant CPS’s breach of contract pursuant to a Subordinated Promissory Note.

PARTIES AND VENUE

2.

CPS Acquisition Company is a domestic profit corporation, organized and existing under the laws of the State of Georgia and is subject to the jurisdiction of this Court. CPS maintains its principal office address at P.O. Box 44089, Kennesaw, Georgia 30160.

3.

CPS may be served with legal process upon its registered agent, Preston C. Delashmit, at 975 Cobb Place Boulevard, Suite 101, Kennesaw, GA 30144.

4.

Plaintiffs Larry K. Thompson and Marilyn T. Thompson are residents of Florida.

5.

This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and Plaintiffs and Defendant are citizens of different states.

6.

Venue is proper in this Court because Defendant maintains its principal office in and may be served in Cobb County, Georgia. Further, pursuant to the

parties' Stock Purchase Agreement, Section 13.4, which agreement is incorporated into the parties' Subordinated Promissory Note, the parties agreed that any proceeding arising out of or related to the agreement may be brought in this Court.

FACTUAL ALLEGATIONS

7.

On March 2, 2015, Defendant CPS, Custom Pine Straw, Inc. and Larry K. Thompson and Marilyn T. Thompson, as shareholders of Custom Pine Straw, Inc., entered into a Stock Purchase Agreement ("Agreement") whereby Defendant CPS purchased all the shares of Custom Pine Straw, Inc.

8.

On March 5, 2015, Defendant CPS executed a Subordinated Promissory Note (the "Note"), in the principal sum of \$600,000.00, with interest accruing on the unpaid principal balance at a fixed simple interest rate of 5.25%, as partial payment of the purchase price under the Agreement. A true and correct copy of the Note is attached hereto as Exhibit 1.

9.

The Note required accrued interest only payments at the rate of 5.25% per year on the principal balance through and including the second anniversary of the Note, payable monthly on the last day of the month. Beginning on March 31, 2017,

Defendant CPS was required to pay Plaintiffs sixty (60) equal principal and interest payments in the amount of six thousand dollars (\$6,000), each payment due and owing on the last day of each month, ending on March 31, 2022.

10.

Pursuant to Paragraph 7 of the Note, Defendant CPS shall be in default if it fails to pay any amount due under the Note and it fails to cure such even of default within thirty (30) days after receipt of written notice from Plaintiffs.

11.

Defendant CPS is not entitled to exercise a right of setoff against Plaintiffs under the terms and conditions of the Agreement and, in fact, provided Plaintiffs no notice of any right of setoff.

12.

Pursuant to the Default provision of the Note, in the event of Defendant's default, the total unpaid balance, including the entire principal amount outstanding and all accrued interest shall immediately become due and payable.

13.

Pursuant to the Costs of Collection section of the Note, Defendant CPS shall pay all costs of collection after default, including, but not limited to, reasonable attorneys' fees actually incurred by Plaintiffs.

14.

On or about February 5, 2020, Defendant CPS made its last payment under the Note. Since that time, CPS has failed or refused to make payment on the Note.

15.

On January 11, 2020, Plaintiffs sent CPS its Notice of Event of Default on Subordinated Promissory Note Dated March 2, 2015 (the “Notice”). A true and correct copy of the Notice is attached hereto as Exhibit 2.

16.

As of the date of filing of this Complaint, CPS owes Plaintiffs the amount of \$366,612.06 (the remaining unpaid principal under the Note), plus interest and its costs of collection, including its reasonable attorneys’ fees.

COUNT ONE – BREACH OF CONTRACT

17.

Through the Note, Defendant CPS had a valid contract with Plaintiffs that provided both the terms under which it was to pay the purchase price under the Agreement and the possible remedies if Defendant CPS was to default.

18.

Defendant CPS failed to abide by the terms of the Note by failing to make timely payments under the Note and, in doing so, Defendant CPS breached its contract with Plaintiffs.

19.

Plaintiffs have been and continue to be injured by Defendant's breach.

20.

Defendant's breach of contract as described herein has caused Plaintiffs to suffer damages, as will be proved at trial, together with its contractually entitled-to attorneys' fees and costs incurred in bringing this action.

COUNT TWO – ATTORNEYS FEES (O.C.G.A. §13-6-11)

21.

Defendant's actions as described above are in bad faith, have caused Plaintiffs unnecessary trouble and expense, and evidence stubborn litigiousness, thereby entitling Plaintiffs to an award of attorneys' fees and expenses of litigation under O.C.G.A. § 13-6-11 in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Larry K. Thompson and Marilyn T. Thompson pray:

- (a) that this Court grant Plaintiffs relief under the Note with interest;
- (b) that this Court award Plaintiffs their attorneys' fees;
- (c) that Defendant bear the cost of this suit; and
- (d) that this Court grant Plaintiffs such other and further relief as may be just and proper.

Dated this 17th day of February, 2021.

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